

§ 298.12

those administered by the United States Coast Guard, Environmental Protection Agency, Federal Communications Commission, Public Health Service, or their respective successor agencies, and all applicable treaties and conventions to which the United States is a signatory, including, but not limited to, the International Convention for Safety of Life at Sea. An Eligible Export Vessel shall be documented in a country that is party to the International Convention for Safety of Life at Sea, or other treaty, convention, or international agreement governing vessel inspection to which the United States is a signatory, and shall comply with the applicable laws, rules, and regulations of its country of documentation, all applicable treaties, conventions on international agreements to which that country is a signatory, and the laws of the ports it serves. An Eligible Export Vessel shall be constructed in accordance with the requirements of the International Maritime Organization.

(d) *Reconstruction or reconditioning.* Repairs necessary for the Vessel to meet the classification standards approved by the Secretary, or any regulatory body, or because of previous inadequate maintenance and repair, shall not constitute reconstruction or reconditioning within the meaning of this paragraph. An applicant for Guarantees secured by a Vessel to be reconstructed or reconditioned shall make the Vessel available at a time and place acceptable to the Secretary for a condition survey to be conducted by representatives of the Secretary. The applicant shall pay the cost of the condition survey. The scope and extent of the condition survey shall not be less effective than that required by the last ABS special survey completed (if the Vessel is classified), next due or overdue, whichever date is nearest in accordance with the Vessel's age. The Vessel shall meet the standard of the survey necessary for retention of class (if the Vessel is classified), and the operating records of the Vessel shall reflect normal operation of the Vessel's main propulsion and other machinery and equipment, consistent with accepted commercial experience and practice.

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(e) *Metric Usage.* The preferred system of measurement and weights for Vessels and Advanced and Modern Shipbuilding Technology shall be the metric system.

§ 298.12 Applicant and operator's qualifications.

(a) *Operator's qualifications.* No Letter Commitment shall be issued by the Secretary without a prior determination that the applicant, bareboat charterer, or other Person identified in the application as the operator of the Vessel, possesses the necessary experience, ability and other qualifications to properly operate and maintain the Vessel or Vessels which serve as security for the Guarantees, and otherwise to comply with all requirements of this part.

(b) *Identity and ownership of applicant.* In order to assess the likelihood that the project will be successful, the Secretary needs information about the applicant and the proposed project. To permit this assessment, each applicant shall provide the following information in its application for Title XI guarantees.

(1) *Incorporated companies.* If the applicant is an incorporated company, it shall submit the following identifying information:

(i) Exact name of applicant and tax identification number of a U.S. corporation, or if appropriate, international identification number of the applicant;

(ii) State or country in which incorporated and date of incorporation; and

(iii) Address of principal executive offices and of important branch offices, if any.

(2) *Partnerships, joint-ventures, associations, unincorporated companies.* If the applicant is a partnership, joint-venture, association, or unincorporated company, it shall submit the following identifying information:

(i) Name of partnership, association, or unincorporated company, and tax identification number, or if appropriate, international identification number of applicant;

(ii) Business address;

(iii) Date of organization;

(iv) Name of partners (general and special) of the partnership or trustee

and holders of beneficial interest in the association or company;

(v) Certified copy of Partnership or Joint Venture Agreement, as amended; and

(vi) A detailed statement regarding financial, management and/or equity transactions which could have a significant impact on the ability of the applicant to meet the requirements placed on the applicant under its financing.

(3) *Other entities.* For any entity that does not fit the descriptions in paragraphs (b)(1) through (b)(3) of this section, MARAD will specify the information that the entity shall submit regarding its identity and ownership.

(c) *Applicants: Business and affiliations.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of applicant and of any predecessor of the applicant. If any change in the principal business activities is presently contemplated (whether in connection with the work to be financed by the guarantees applied for, or otherwise), applicant shall give a brief statement of the nature and circumstances thereof;

(2) A list of all companies or persons (hereinafter referred to as related companies) that directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, the applicant. Also indicate the nature of the business transacted by each, the relationships between the companies named, and the nature and extent of the control. This information may be furnished in the form of a chart. Specify whether any related companies have previously applied for or received any Title XI assistance;

(3) A statement of whether or not during the past 5 years the applicant, or any predecessor or related company, has been in bankruptcy or in reorganization under the Federal Bankruptcy Act or in any other insolvency or reorganization proceedings under either domestic or foreign statutes, and whether or not any substantial property of the applicant or a predecessor or related company has been acquired in any such proceedings or has been subject to foreclosure or receivership during such pe-

riod, and details of all such occurrences; and

(4) A statement of whether or not the applicant or any predecessor or related company is now, or during the past 5 years has been, in default under any agreement or undertaking:

(i) With others, the United States or a country other than the United States; or

(ii) Guaranteed or insured by the United States or a country other than the United States.

(d) *Management of applicant.* The applicant shall include:

(1) A brief description of the principal business activities during the past 5 years of each director and each principal executive officer of the applicant; and

(2) The name and address of each organization engaged in business activities related to those carried on or to be carried on by the applicant with which any person named in answer to paragraph (d)(1) of this section has any present business connection, the name of each such person and, briefly, the nature of such connection.

(e) *Applicant's property and activity.* The applicant shall provide:

(1) A brief description of the general character and location of the principal properties of the applicant employed in its business, other than vessels, describing encumbrances, if any;

(2) A statement with respect to each vessel owned by the applicant, or operated by it under charter, stating name, gross tonnage, net tonnage, deadweight tonnage, age, type, speed, registry, cargo capacity and number and type of cargo units (container, trailer, etc.); and

(3) A summary statement which addresses the services, routes, or line (including ports served) on which the applicant operates any of the vessels owned or chartered by it. Also, a schedule and tonnage of cargo carried by the applicant during the two preceding years, the units carried (containers, barges, passengers, etc.) and the cargo capacity utilization factor experienced.

(f) *Operating ability.* (1) In the case of an applicant for a vessel financing Guarantee, the applicant shall submit

a detailed statement showing its ability to successfully operate the Vessel(s), including name, education, background of, and licenses held by all senior supervisory personnel concerned with the physical operation of the ships owned by the applicant or proposed for construction. If not now an operator of Vessel(s), the applicant shall indicate a proposed organizational structure of key operating personnel or the name of the proposed operating agent. If now the owner and/or operator of ships, the applicant shall furnish data as to union affiliations and existing contracts necessary to the management and operation of the Vessel(s) covering such items as bunkers, repairs, stores and stevedoring, and names of companies (domestic and foreign) for which the company acts as agent. If a company other than the applicant is designated to operate the Vessel(s), then the above information shall be provided for that company, together with a copy of the proposed operating agreement(s).

(2) In the case of an Eligible Shipyard which is an applicant for a Guarantee for Advanced or Modern Shipbuilding Technology, a detailed statement shall be submitted evidencing its ability to successfully construct/reconstruct vessel(s), including name, education, background of, and licenses, if any, held by all senior supervisory personnel in the shipyard concerned with the physical operation of the shipyard, union affiliations and existing contracts necessary to the management and operation of the shipyard.

§ 298.13 Financial requirements.

(a)(1) *In general.* To be eligible for guarantees, the applicant and/or the parent organization (when applicable), and any other participants in the project having a significant financial or contractual relationship with the applicant shall submit information, respectively, on their financial condition. This information shall be submitted at the time of the application and supplemented as subsequently required by the Secretary. In addition, the applicant shall submit information satisfactory to the Secretary that financial resources are available to sup-

port the project which is the subject of the Title XI application.

(2) *Cost of the project.* Applicant shall submit the following cost information with respect to the project:

(i) In the case of an applicant for Vessel financing Guarantees, a detailed statement of the estimated Actual Cost of construction, reconstruction or reconditioning of the Vessel(s) including those items which would normally be capitalized as Vessel construction costs. Net interest during construction is the total estimated construction period interest on non-equity funds less estimated earnings from the escrow fund, if such fund is to be established prior to Vessel(s) delivery. Each item of foreign components and services shall be excluded from Actual Cost, unless a waiver is specifically granted for the item, which waiver shall not be granted for major foreign components of the hull and superstructure. The standard for granting a waiver is certification by the applicant, to be reviewed by the Secretary, that a foreign item or service is not available in the United States on a timely or price-competitive basis, or is not of sufficient quality. Although excluded from Actual Cost, foreign components of the hull and superstructure can be regarded as owner-furnished equipment that may be used in satisfying the applicant's equity requirements imposed by paragraph (a)(3) of this section. An illustration of how the cost of foreign components of the hull and superstructure may be used to satisfy an applicant's equity requirements is outlined below. If any of the costs have been incurred by written contracts such as the shipyard contract, management or operating agreement, signed copies should be forwarded with the application. The applicant may be required to have the contracting shipyard submit back-up cost details and technical data. This information shall be submitted in the format as prescribed by the Title XI application procedures.

ILLUSTRATION—COST OF FOREIGN COMPONENTS SATISFYING EQUITY REQUIREMENTS.

Assuming that the total project cost is \$100 million, of which the cost of major foreign components in the hull and superstructure